

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-185462

DATE: December 17, 1975

MATTER OF: La Crosse Garment Manufacturing Company

DIGEST:

1. Protest concerning small business size status of low bidder is not for consideration since conclusive authority over question of bidder's size status is vested by statute in SBA.
2. Protest that low bidder is not responsible will not be reviewed by GAO except for showing of fraud or that solicitation contains definitive responsibility criteria which allegedly have not been applied.

La Crosse Garment Manufacturing Company (La Crosse) protests the award of a contract to Inflated Products, Inc. (Inflated), the low bidder, under solicitation No. DSA100-76-B-0455, issued by the Defense Supply Agency's Defense Personnel Support Center, Philadelphia, Pennsylvania.

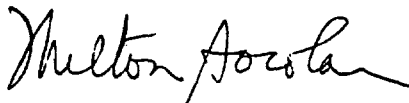
The solicitation was set aside exclusively for small business participation. The protester contends that Inflated should not be awarded the contract since it does not qualify as a small business and is nonresponsible.

Pursuant to 15 U.S.C. § 637(b)(6)(1970), the Small Business Administration (SBA) is empowered to determine a business concern's size status for procurement purposes. Offices of the Government having procurement powers must accept as conclusive any determination reached by SBA as to which concerns are to be designated as small business. Therefore, the SBA is the sole adjudicator of the size standard issue in question. See 52 Comp. Gen. 434, 435 (1973); National Electronics Contractors Association, B-181511, July 15, 1974, 74-2 CPD; and T&D Transfer and Storage; International Movers, Inc., B-182548, November 20, 1974, 74-2 CPD 274.

As regards the issue of Inflated's responsibility, this Office no longer reviews bid protests involving agencies' affirmative determinations of responsibility, except for actions by procurement officials which are tantamount to fraud or where the solicitation

contains definitive responsibility criteria which allegedly have not been applied. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Affirmative determinations of responsibility are based in large measure on subjective judgments which are largely within the discretion of procuring officials who must suffer any difficulties experienced by reason of a contractor's inability to perform. However, we do consider protests involving determinations of nonresponsibility to provide assurance to the rejected bidder against the arbitrary rejection of its bid.

In view of the foregoing, this protest is not for consideration by the General Accounting Office and is hereby dismissed.

for 
Paul G. Dembling
General Counsel